



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 3324-99
21 October 1999

LTCOL RO [REDACTED] USMCR
[REDACTED]

Dear Colonel [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 17 May 1999, and the advisory opinion from HQMC dated 1 September 1999, copies of which are attached. They also considered your rebuttal letters dated 19 August and 13 September 1999, each with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board substantially concurred with the comments contained in the report of the PERB in finding that your contested adverse fitness report should stand. They were unable to find that this report was given as a form of punishment; that the report was erroneous in stating that you involuntarily transferred to the Individual Ready Reserve (IRR), rather than voluntarily transferred; or that the report was in reprisal for your request mast. They found that the report of investigation at enclosure (3) to your letter of 19 August 1999 did show that you were under investigation for alleged misconduct, and that the investigating officer's recommendation was that no disciplinary action be taken against you for filing the travel claim in question. However, they also noted that the report further recommended that you be "briefed on proper travel claim procedures and entitlements," and that you be "involuntarily transferred to the ready reserve [sic]." They concluded that this supported the statements in

the contested fitness report that you "Exercised poor judgement in the administration of a travel voucher" and that you were involuntarily transferred to the IRR. Finally, they found that your outstanding fitness reports for 19 September to 31 December 1992, from the same reporting senior, and 2 to 18 July 1993 did not invalidate the contested report.

Since the Board found no defect in your performance record, they had no basis to strike your failure by the Fiscal Year 2000 Reserve Colonel Selection Board.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

1610
MMER/PERB
MAY 17 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
LIEUTENANT COLONEL [REDACTED], [REDACTED]
USMCR

Ref: (a) LtCol. [REDACTED] DD Form 149 of 20 Jan 99
(b) MCO P1610.7B w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 12 May 1999 to consider Lieutenant Colonel [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 930101 to 930826 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the report, submitted some 15 months after the fact, was never presented to him for an opportunity to provide a rebuttal statement. He also states that he was cleared of all charges concerning an alleged fraudulent travel voucher and that he was not "involuntarily" transferred to the Inactive Ready Reserve (IRR). Finally, the petitioner states his opinion that the report was prepared in retaliation for his action in requesting mast to the Commanding General, Marine Forces Reserve, to surface his concerns for unit combat readiness. To support his appeal, the petitioner furnishes a copy of the Request Mast document.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. While the Board acknowledges the extremely late submission of the report, that in itself is not considered an invalidating factor. The determination of a report's validity is in its truth and accuracy, not its timeliness.

b. What the petitioner furnishes as documentation in his enclosures to reference (a) do nothing to cast doubt as to the report's accuracy.

(1) The letter at enclosure (3) to reference (a) is not validated and the petitioner provides no proof of record of any request mast action.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
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USMCR

(2) The supposed "after action report" at enclosure (4) to reference (a) refutes nothing in the challenged report.

(3) Poor judgment in handling a travel voucher is not a crime, and the petitioner shows no proof he was under investigation for violating the UCMJ; or if he were, that an investigation somehow exonerated him.

(4) Although the petitioner claims he was to be involuntarily transferred to the IRR, but did it voluntarily, there is nothing to corroborate that fact. Absent is any letter request or official documentation to substantiate his argument.

c. The Reporting Senior attested that he attempted to obtain the petitioner's acknowledgment and rebuttal statement, but received no response. Likewise, this Headquarters further attempted to secure the petitioner's acknowledgment, but also received no response. The report was, therefore, correctly filed so documenting the foregoing.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Lieutenant Colonel [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1040
RAM-6
1 Sept 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF LIEUTENANT COLONEL [REDACTED]
[REDACTED] SMCR

Ref: (a) MMER/PERB Request for Advisory Opinion dtd 18 Aug 99
(b) Petitioners fitness report dtd 01 Jan 93 - 26 Aug 93

1. Per reference (a), the following advisory opinion is provided.
2. The petitioner's efforts to remove the reference (b) fitness report from his OMPF if successful, would not likely result in his selection for promotion.
3. Not including the reference (b) fitness report, during 10 separate reporting occasions the petitioner received fitness report section B markings less than excellent, during 2 reporting occasions section B markings were less than average, during 21 reporting occasions value and distribution ratings were less than outstanding and during 2 reporting occasions reporting senior desirability was less than "Particularly Desire".
4. Although it is impossible to speculate the results of any selection board, the Reserve Colonel Selection board is extremely competitive, routinely non-selecting 65% of the fully qualified candidates. It is the opinion of the Reserve Affairs Division, that there are sufficient competitive issues remaining in the petitioners OMPF to likely cause FOS to the grade of Colonel.
5. The point of contact is [REDACTED], at [REDACTED]

[REDACTED]
[REDACTED]
Major, U.S. Marine Corps Reserve
Head, Reserve Affairs Retention
By direction of the
Commandant of the Marine Corps

[Handwritten signature]
254 78 8354